THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 11079 of 2005

Between:

Laxman, S/o Baswanth, R/o Sirpoor Vg, Madnoor Mandal, Nizamabad District.

..... PETITIONER

AND

1The District Collector, Nizamabad and others.

..RESPONDENTS

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 11079 of 2005

ORDER:

1) This writ petition has been filed by Laxman with a prayer to issue a writ, order or direction more in the nature of writ of Certiorari calling for the records relating to the order passed by the 3rd respondent vide No.B/432/05, dated 26.4.2005 and also the order passed by the 2nd respondent vide No.B1/1819/2005, dated 28.4.2005 and quash the same.

2) The petitioner is a resident of Sirpoor village, Madnoor Mandal, Nizamabad

District. He Claims that his father came into possession of site admeasuring 12 x 8 x 24 x 6 in Sy.No.83/2 situated at Sirpoor village, Madnoor Mandal, Nizamabad District, about 35 years ago. According to him, the said site, adjacent to his house, was uneven and his father levelled it and made it fit for construction of house. His father secured Possession Certificate from the Mandal Revenue Officer, Madnoor vide No.C/108/2004, dated 24.1.2004, since he has been in possession of it over a considerable period. Subsequently, he approached the revenue authorities to issue Enjoyment Certificate to enable him to obtain loan from Housing Corporation for the purpose of constructing a house for his family shelter. The Mandal Revenue Officer issued Enjoyment Certificate in his favour vide No.B/271/905 dated 11.3.2005, after through enquiry. After obtaining Enjoyment Certificate, dated 11.3.2005, he approached the Housing Corporation branch at Nizamabad for financial assistance. The Housing Corporation, after causing due enquiry, accepted his request under S.C. Housing Beneficiary Scheme for extending financial assistance for construction of the house. Grama panchayt had granted permission for construction of house after calling for objections from the adjacent land owners. It is his further case that his mother contested in grama panchayat and got elected as Sarpanch of the village. One Laxmi Bai who lost the election developed grudge against his mother and instigated the respondents of the locality and made them to file representation dated 12.4.2005 alleging that site over which he made construction, has been ear-marked for Madiga community Hall. Thereupon, the Mandal Revenue Office-2nd respondent proceded to cancel the enjoyment certificate without causing any enquiry. Hence the writ petitioners assailing the acts of the respondents in canceling the enjoyment certificate.

3) Respondents filed counter affidavit.

One A.Manohar, Revenue Divisional Officer, Bodhan has sworn to the counter-affidavit filed on behalf of the respondents. It is stated in the counter-affidavit that the petitioner was not issued any house site patta by the respondents in the Sy.No.83/2. He got sanctioned housing loan from the Andhra Pradesh State Housing Corporation without any document evidencing title to the site. The petitioner is son of the Sarpanch of the village. The villagers of Sirpoor submitted representations to Mandal Revenue Officer, Madnoor; Sub

Inspector, Madnoor; Revenue Divisional Officer, Bodhan; and District Collector Nizamabad complaining of illegal construction of the petitioners on the Bits ear marked for the construction of Madiga community Hall. Thereafter a show cause notice came to be issued to the petitioners and his mother on 3.4.2005. The petitioners did not choose to submit explanation to the show cause notice. The District Collector after verifications of the record issued instructions to cancel the enjoyment certificate and for taking over piece of land along with structures into Government custody under the cover of Panchanama. I deem it appropriate to refer para 4 and it is thus:

> "*In reply to para 3, it is submitted that the family of Sarpanch consists of two sons, two daughters wife and husband totally (6) members, it is a joint family. The petitioner is not separated from his parents. The petitioner has not at all developed the land. He has managed to get an Enjoyment Certificate by concealing the facts influencing the Gram Panchayat Secretary, Additional Revenue Inspector, Madnoor and the Mandal Surveyor. The mother of the petitioner, who is herself Sarpanch of the village, certified on the petition of her son that the land is their own land where as the plot of land was a part of acquired land of the Government for house sites in the year 1976. When the villages started relay Hunger, Strike, Amarana Nirahara Dhiksha and carried the issue before the Higher Officers and Media. There was harsh conflicts in between villagers and the group persons of the Sarpanch husband in the presence of the Mandal Revenue Officer and Sub Inspector of Police, Madnoor and other office staff and village elders. When the matter became very serious the facts were intimated to the Revenue Divisional Officer Bodhan and to the District Collector Nizamabad. The District Collector, Nizamabad after perusal of records and reports, issued orders vide his reference bearing No.G2/1948/05 dated 26.4.2005 for canceling the Enjoyment Certificate issued vide Mandal Revenue Officer, Madnoor Reference No.B/271/04, dated 11.3.2005 and for taking over of the land along with constructed structure under cover of Panchanama. The petitioner deliberately absented from the village during enquiries and spot inspections in spite of receipt of notice. Therefore, the contention of the petitioner that enjoyment certificate was cancel without giving any notice is wrong."*

4) Heard learned counsel for the petitioner and learned Government Pleader appearing for respondents 1 to 5 and learned counsel appearing for respondents 5 to 9.

5) The learned counsel for the petitioner submitted that the Enjoyment

Certificate has been cancelled, without issuing any notice to the petitioner and therefore, the orders passed by respondents 2 and 3 are not legal and proper and the same are required to be quashed.

The learned Government Pleader for assignment submits that Enjoyment Certificate came to be cancelled after due enquiry. He placed on record the photostat copy of the notice said to have been issued to the petitioner.

As seen from the copy of the notice and the same has been served on Staya Sheela and Gangaram, who are no other than the sister and paternal uncle of the petitioner since the addressess is found to be out of the village. Enjoyment certificate issued in the name of the petitioner came to be cancelled after due enquiry and on verification of the record and local inspection by the Mandal Revenue Officer.

Admittedly, the petitioner has no right over the site. in respect of which Enjoyment Certificate has been issued earlier by the Mandal Revenue Officer earlier. The respondents 2 and 3 after due enquiry cancelled the enjoyment certificate. If the petitioner wants to establish his right or possession voer the property in question, he is at liberty in accdordance with law. There is no public element involved in the writ petition warranting interference of this Court under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No costs.

26-10-2005

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